There remains a further point to be decided as between the plaintiff and the 1st defendant. The plaintiff contends not only that the transaction between him and the 1st defendant is void under the Bills of Sale Ordinance but also that the 1st defendant is a moneylender and therefore by virtue of the provisions of Sections 15 and 16 of the Moneylenders Ordinance, 1951 the contract is unenforceable because the 1st defendant is unlicensed, and there is no such memorandum in writing of the transaction as is called for by Section 16.

The question of whether a person carries on the business of a moneylender has been held to be a question of fact, but in deciding this question of fact regard must be had to the provisions of Section 3 of the Ordinance, which provides that any person who lends a sum of money in consideration of a larger sum being repaid shall be presumed until the contrary be proved to be a moneylender.

I have held that the transaction between the parties was for a loan of $750 and that the sum of $1,000 was to be repaid. I do not think the fact that the houses in question were transferred as security makes this transaction any the less one in which a sum of money was lent in consideration of a larger sum being repaid. I think therefore that the presumption under Section 3 was raised and it was therefore for the 1st defendant to satisfy me that he was not a moneylender.

Far from satisfying me that he was not a moneylender his evidence went quite a long way towards showing that he was in fact a moneylender. He stated that he was a business man, but admitted that he had never been registered under any registration of businesses law. He is a Police pensioner, whose final salary in the Police in 1932 was $38 per month, yet he admitted to having a sum of $3,000 when he retired. His pension was at first $9.60 a month and is now $33.36 per month and he now possesses landed property to the value of $50,000 or $60,000. Of the many guesses one might make as to how he managed to acquire property of such value first as a Policeman and then as a Police pensioner, perhaps the most charitable is that he acquired it over the years by means of moneylending transactions. That he had been a moneylender in the past there is no doubt — indeed, after considerable pressure in cross-examination he admitted that he had been a moneylender until three years ago. He stated that being illiterate he was unable to carry on moneylending under the more complicated provisions of the new Ordinance which came into force on the 31st March, 1952. I have no doubt that this Ordinance has to a large extent restricted his activities as a moneylender, but I have little doubt that he has been a moneylender for some considerable time and that he was tempted, at least in respect of the transaction in question, to continue his activities as such without complying with the provisions of the new Ordinance. At all events he has failed to rebut the presumption raised by Section 3 and I therefore hold that for the purposes of the present proceedings the 1st defendant was a moneylender and that therefore the contract he made with the plaintiff is unenforceable.

The reason why it is necessary to decide this point is that if the transaction is unenforceable under the Moneylenders Ordinance, as I have held it to be, then, following the decision of the Court of Appeal in *AR. VE. Palanisamy Servai v. S. V. Lingham*[3], repayment of the amount due in respect of the loan is not a condition which will be imposed upon the plaintiff in obtaining the return of his security.

In the event I find in favour of the plaintiff on his claim against both defendants and against the 2nd defendant on his counterclaim. In view of the numerous alternatives in the prayers to the Statement of Claim I will hear further argument as to the form which the formal judgment is to take.

Order accordingly.

Solicitors: *Ong Huck Lim; Jag-Jit Singh; Hogan, Adams & Allan.*

Re K. M. NOORDIN (Petitioner); N. P. NARAYANAN CHETTIAR v. V. VARUSAI RAWTHER

[A.C.J. (Spenser Wilkinson J.) September 16, 1954]

[Penang — Civil Revision No. 2 of 1954]

Landlord and Tenant — Control of Rent Ordinance, 1948, s. 14(1) — Whether order made against tenant enforceable as against sub-tenants under — Powers of revision under ss. 53 & 55 of Courts Ordinance, 1948.

The plaintiff-landlord in this case claimed for possession of premises on the ground that the tenant was in arrears of rent. In default of appearance by tenant, an order as prayed was made against the tenant and all persons claiming through and under him with costs.

The petitioner, alleging himself to be a sub-tenant, applied to the High Court for revision on the ground that he was a lawful sub-tenant and had not been given an opportunity of being heard.

Held: under ss. 53 and 55 of the Courts Ordinance, 1948, powers of revision can be exercised, and therefore, in order to make the subletting unlawful prohibition against subletting must have existed at the time of subletting. As subletting was lawful this case must be remitted to the Magistrate's Court for the sub-tenant to be heard.

Case referred to:—

(1) *Ng Eng Kang v. R. Sitharam* (1952) M.L.J. 155.

CIVIL REVISION.

R. D. Hume for the plaintiff.

H. E. P. Powell for the petitioner.

Spenser Wilkinson J. : — This was a claim by a landlord for possession of premises on the ground that the tenant was in arrears of rent.

The defendant did not appear at the hearing but applied through his Counsel for an adjournment which was refused. Counsel for the defendant being then without instructions withdrew from the case, which was, therefore, virtually undefended.

The plaintiff gave evidence in support of his claim and at the conclusion of his evidence the learned Magistrate made an order as prayed against the defendant and all persons claiming through or under him with costs.

One K. M. Noordin, alleging himself to be a sub-tenant, applied to the Court for revision on the ground that he was a lawful sub-tenant and that in any event he had not been given an opportunity of being heard and that, therefore, the order made by the learned Magistrate should not have applied to himself and the other sub-tenants. Upon this application I decided to exercise my powers of revision under Sections 53 and 55 of the Courts Ordinance, 1948.

Mr. Hume who appeared on the revision on behalf of the plaintiff informed me that the order made in this case by the learned Magistrate was the usual form of order in these cases. If this be so I am inclined to think that it is a form of order which should be discontinued. In the first place persons claiming through the defendant are not before the Court and I see no reason to mention them in the judgment. Secondly, I am inclined to doubt whether sub-tenants who claim the protection of the Control of Rent Ordinance can strictly be said to claim through the chief tenant, because their claim really rests upon the provisions of Section 14 of the Control of Rent Ordinance which in certain circumstances make them statutory tenants of the landlord when an order has been made for recovery of possession as against the chief tenant. However this may be, I do not think that this form of order is a compliance with the mandatory provisions of sub-section (1) of Section 14 which reads as follows:—

"14. (1) No judgment or order for recovery of possession shall be enforced as against sub-tenants (if any) of the tenant of the premises where the tenant was not prohibited from sub-letting by the terms of his tenancy; and every such judgment or order shall declare whether it may be enforced as against such sub-tenants or not."

It appears that on the 1st March, 1950 a fresh tenancy was granted to the chief tenant at an increased rental and that this new tenancy included a condition against sub-letting premises without the consent of the landlord. It is alleged, however, that some of the sub-tenants were in occupation prior to the inception of this new tenancy, and according to the decision of *Ng Eng Kang v. R. Sitharam*[1] in order to make the sub-letting unlawful the prohibition against sub-letting must have existed at the time of the sub-letting.

Moreover, in the judgment of the Court of Appeal in that case I find the following passage:—

"I think that the Court should not declare any judgment enforceable against sub-tenants unless it has reason to be satisfied that they are not entitled to protection. I do not see how any Court can be so satisfied without hearing them."

Following the decision in that case therefore I varied the order of the learned Magistrate by deleting therefrom the words:—

"and all persons claiming through or under them"

and remitted the case to the Magistrate's Court for the sub-tenants to be heard upon the question of whether or not the judgment should be declared to be enforceable against them or not.

Order accordingly.

Solicitors: *Hogan, Adams & Allan; H. E. P. Powell & Co.*

LEE CHENG v. LAM WAN THIN & ORS.

[A. C. J. (Abbott J.) May 17, 1954]

[Seremban — Civil Appeal No. 3 of 1954]

Workmen's Compensation — Worker having to cross and re-cross river in course of employment in felling timber — Two methods of crossing provided, one becoming useless due to flood — Second means of crossing not available when workman became entitled to proceed to his home — Workman taking only route ready at hand and available to him to return — Employer liable to compensate for worker's loss of life.

In this appeal, the deceased, together with 5 other labourers, were employed by the appellant to fell timber on the other side of a river. In order to reach the place where the timber was to be felled the labourers had to cross the river and to re-cross it when their day's work was finished. Two methods of crossing were provided: by means of a tree which had been felled so as to make a bridge and a boat. On the day in question the river was in flood and the felled tree was useless for its purpose. The deceased and his fellow-workmen had finished their day's work and the time had come for them to cross the river in order to proceed to their homes. The boat was not available at the time when the labourers wished to cross to the other bank. The deceased and one